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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/716,656

11/19/2003

David R. Cheriton

CIS0197US

7668

33031 7590 06/23/2009
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EXAMINER

POLTORAK, PIOTR

ART UNIT

PAPER NUMBER

2434

MAIL DATE

DELIVERY MODE

06/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/716,656	Applicant(s) CHERITON, DAVID R.	
	Examiner PETER POLTORAK	Art Unit 2434	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-11,14-20,22,24-31 and 34-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20,22 and 24-29 is/are allowed.
- 6) ☒ Claim(s) 1,4,6-11,14-19,30,31 and 34-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment received on 3/20/09 has been entered.

Response to Arguments/Amendments

2. The amendments to the specification have been accepted.
3. In light of applicant's amendment the 35 USC § 101 rejection cited toward claims 1, 4, 6-11, 14-20, 22, 24-30 is withdrawn. However, it is noted that claims 30-31 and 34-49 have not been amended and are directed towards non-statutory subject matter: "a computer program product" which should be embodied on the computer readable storage medium (included in the claim language) in order to overcome the 35 USC § 101 rejection. As a result, claims 30-31 and 34-39 remain rejected.
4. Claims 1, 4, 6-11, 14-20, 22, 24-31 and 34-49 have been examined.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 30-31 and 34-49 remain rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
6. The details of the rejections are offered in the Response to Arguments/Amendments". Amending claim 30 indicating "a computer program

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product" being "stored on the computer readable storage medium" would overcome the 35 U.S.C. 101 rejection.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1, 4, 6-11, 14-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In particular, claim 1 has been amended to indicate that "said network interface comprises a processor and a first memory". However, the specification does not support the newly added limitation. In fact commonly in the art, a network interface (i.e. NIC card or abstract object defining communication channel) does not have memory. Perhaps, the newly amended limitation is simply a typographical error and the claim should read "A network device comprising, ~~wherein said network interface comprises~~ a network interface, a processor and a first memory ...".

Applicant should provide appropriate support for the newly amended limitations. (In case it is typographical error, as suggested above, the claim language should be amended.)

Appropriate correction is required.

Conclusion

The timely filed amendment addressing the 101 issues as indicated above as well as the amendment to claim 1 addressing the 35 USC § 112 issue **would be entered**, providing that the clarification/amendment does not raise new issues, and claims would be in condition for allowance.

Applicant correcting the typographical error would be considered as amendment not raising new issues. Similarly the specification support of the intended meaning of the newly presented claims would be considered as the clarification not raising new issues.

THIS ACTION IS MADE FINAL.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Poltorak whose telephone number is (571) 272-3840. The examiner can normally be reached Monday through Thursday from 9:00 a.m. to 4:00 p.m. and alternate Fridays from 9:00 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on (571) 272-3811. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Peter Poltorak/

Examiner, Art Unit 2434

/Kambiz Zand/

Supervisory Patent Examiner, Art Unit 2434